

# Native American Consultation and Miscellaneous Environmental Issues

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# Whose Job Is It Anyway?

You'll be glad to know it's the Federal agency's responsibility to conduct Native American Consultation – but – that doesn't mean you, the Sponsor, have no roll in the process.

# What Regulations Apply

- Section 106 of the National Historic Preservation Act
- FAA Order 1210.20, American Indian and Alaska Native Tribal Consultation Policy and Procedures
- DOT Order 5301.1, DOT Programs, Policies, and Procedures Affecting American Indians, Alaska Natives, and Tribes

# Continuation – What Regulations Apply?

- Executive Order 13084, Consultation and Coordination with Indian Tribal Governments
- Executive Memorandum, Government-to-Government Relations with Native American Tribal Governments – April 29, 1994
- Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

# Why Do Agencies Consult?

- There are 562 Federally recognized Indian tribes
- Because it's the law
- Because the relationship of the Native Americans to the United States is established in American History as a trust responsibility, which is not the same as the relationship with the public or other agencies.

# Continuation – Why Do Agencies Consult?

- Because a Tribe/Pueblo requests it
- Because your project may impact some important aspect of the Tribe's way of life (cultural properties, ceremonies, traditions important to their continued survival (Section 106))

# Unique Legal Relationship

- Sovereign status of Indian tribes and special provisions of law set them apart from members of the public
- Interactions with tribes are different
- Federal agencies are generally required to show good faith effort to notify and consult tribes regarding their proposed actions

# Who to consult with

- It depends ----
- Various Federal statutes require consultation with—
  - Federally recognized tribal government
  - Traditional and cultural religious leaders and practitioners
  - Non-Federally Recognized tribes



# Where Are The Tribes/Pueblos

in the  
Continental United States

0 100 200 400  
Nautical Miles

HQ AF Ranges and Airspace, as of 850783. Contact: 703.691.0202

# Identifying Tribes

- **YOUR SHPO IS A GOOD PLACE TO START**
- BIA Tribal Leaders Directory
  - [http://indian.senate.gov/tribal\\_leaders.pdf](http://indian.senate.gov/tribal_leaders.pdf)
- Judicially Established Land Claims Map
  - [http://www.wes.army.mil/el/ccspt/natamap/usa\\_pg.html](http://www.wes.army.mil/el/ccspt/natamap/usa_pg.html)
- National Congress of American Indians
  - [http://www.ncai.org/main/pages/tribal\\_directory/index.asp](http://www.ncai.org/main/pages/tribal_directory/index.asp)

# When to consult?

- Early, Early, Early
- Pre-decisional consultation helps identify issues and opportunities at the beginning
- Reduces potential delays and increased costs
- Can be done within the planning or environmental review process

# Consultation Process

- Should take into account the views of the tribe
- Take into account the level of impact, the complexity of the issues, and level of concern
- Should continue throughout the decision-making process

# Sensitive Data

- Freedom of Information Act exemptions
- National Historic Preservation Act--Section 304--permits an agency to not disclose information if it may result in harm to the property, a significant invasion of privacy or impede traditional religious practice at the site
- Archaeological Resources Protection Act—Section 9 allows agencies to protect resources by restricting information on their nature and location

# Key elements in coordination process

- Timely notice of proposed federal action that will require consultation
- Exchange of information on potential impacts to tribal rights or trust resources
- Fully consider tribal input and recommendations
- Document how input and recommendations are a part of the decision-making process